

FILED
BILLINGS DIV.

IN THE UNITED STATES DISTRICT COURT

2010 JUN 12 PM 4 06

BRUCE E. LITTON, JR.

FOR THE DISTRICT OF MONTANA:

BY _____
DEPUTY CLERK

BILLINGS DIVISION

KRISTEE RAE LANG,

Plaintiff,

vs.

MENTAL HEALTH CENTER, et al.,

Respondents.

[illegible]

CV-09-38-BLG-RFC

) ORDER ADOPTING FINDINGS
) AND RECOMMENDATIONS OF
) U.S. MAGISTRATE JUDGE

On November 4, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 10*) with respect to Plaintiff's Amended Complaint (*Doc. 9*). Magistrate Judge Ostby recommends that the Amended Complaint be dismissed.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiff filed a letter, which this Court has construed as an objection, on November 9, 2009 (*Doc. 11*). Plaintiff's objections require this Court to make a *de novo* determination of those portions of the Findings and Recommendations to

which objection is made. 28 U.S.C. § 636(b)(1). Plaintiff's objections are not well taken.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

Ms. Lang fails to state a claim upon which relief may be granted for several reasons. First, the Court cannot discern a federal cause of action in the Amended Complaint. A federal court only has jurisdiction over a matter which presents a federal question as set forth by 28 U.S.C. § 1331 or where there is complete diversity of citizenship and the amount in controversy exceeds \$75,000 as set forth by 28 U.S.C. § 1332. Ms. Lang has established neither in this case.

Whether or not the named Defendants provided Ms. Lang with the help she felt she needed does not state a cause of action arising under the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 1331. If Ms. Lang has any claim at all, it would have to come under Montana state law.

Similarly, it does not appear Ms. Lang can establish diversity of citizenship because Ms. Lang and the named Defendants all appear to be residents of Montana.

Moreover, Ms. Lang has not alleged that the named Defendants are “person[s] acting under color of state law.” *West v. Atkins*, 487 U.S. 42 (1988). The Bill of Rights does not prohibit acts of private persons, *Public Utilities Comm’n v. Pollak*, 343 U.S. 451, 461-62, 72 S.Ct. 813, 96 L. Ed. 1068 (1952), however discriminatory or wrongful. *District of Columbia v. Carter*, 409 U.S. 418, 422-23, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973). The “color of state law” requirement is a condition precedent to stating a § 1983 claim. It arises from the specific language of § 1983 and the nature of the Fourteenth Amendment itself. Section 1983 regulates only state and local government conduct, it does not reach purely private conduct.

Finally, Ms. Lang’s claims appear to be barred by the applicable statute of limitations. In Montana, the statute of limitations period is three years after the action accrues. Mont. Code. Ann. § 27-2-204(1). Ms. Lang filed her original Complaint on April 7, 2009. Therefore, she cannot bring any personal injury claims which occurred prior to April 7, 2006. Ms. Lang provides two dates in her Amended Complaint, 1995 and 2005, both prior to the limitations period.

Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Amended Complaint (*Doc. 9*) is DISMISSED for failure to state a claim upon which relief may be granted.

The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58, F.R.Civ.P.

The Clerk of Court is also directed to have the docket reflect that the Court certifies, pursuant to Fed.R.App.P. 24(a)(3)(A), that any appeal of this decision would not be taken in good faith. The record makes plain the Amended Complaint is frivolous as it lacks arguable substance in law or fact.

The Clerk of Court shall notify the parties of the making of this Order.

DATED this 12th day of January, 2010.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE